



We may grant a motion for summary decision if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.<sup>1</sup>

### **Findings of Fact**

1. KCMC filed a use tax return with the Director on or before August 15, 2010, for the 2009 tax year. KCMC paid use tax in the amount of \$15,333.42 on that same date.

2. KCMC filed an amended use tax return and a request for a use tax refund for the 2009 tax year with the Director on May 2, 2013.

3. The Director denied KCMC's request for a refund on June 3, 2013.

### **Conclusions of Law**

We have jurisdiction over the Director's final decisions. § 621.050.<sup>2</sup> Our duty is not merely to review the Director's decision, but to independently apply existing law to the facts and render the ultimate administrative decision.<sup>3</sup>

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute.<sup>4</sup> “When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit.”<sup>5</sup>

Section 144.190.2 governs refunds and states, in relevant part, that “no such credit or refund shall be allowed unless duplicate copies of a claim for refund are filed within three years from the date of overpayment.” Section 144.696 explicitly makes § 144.190 applicable to use tax refunds.

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<sup>1</sup> 1 CSR 15-3.440(6)(A).

<sup>2</sup> All statutory references are to the 2000 version of the Missouri Revised Statutes.

<sup>3</sup> *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. 1990).

<sup>4</sup> *Community Fed. Sav. & Loan Ass'n v. Director of Revenue*, 796 S.W.2d 883, 885 (Mo. 1990).

<sup>5</sup> *State ex rel. Brady Motorfrate, Inc. v. State Tax Comm'n*, 517 S.W.2d 133, 137 (Mo. 1974).

Thus, a refund claim must be filed within three years of the overpayment. KCMC made the claimed overpayment on April 15, 2010. It filed its request for a refund on May 2, 2013. May 2, 2013, is more than three years after April 15, 2010. Therefore, KCMC filed its request for a refund outside the limitations period. KCMC cannot receive a refund for overpayment of use tax during the 2009 tax year.

### **Summary**

We grant the Director's motion for partial summary judgment. We lack authority to rule on KCMC's request for a use tax refund for the 2009 tax year. The question of KCMC's entitlement to a use tax refund for the 2010 tax year is still pending before us.

SO ORDERED on November 19, 2013.

*\s\ Karen A. Winn*

KAREN A. WINN  
Commissioner